

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>UNITED STATES OF AMERICA</b>	*	<b>CRIMINAL DOCKET NO.: 09-121</b>
<b>VERSUS</b>	*	<b>SECTION: "F" (3)</b>
<b>MARCELLUS ESTEVES III</b>	*	
	*   *   *	

**FACTUAL BASIS**

If this case were to proceed to trial, the Government would prove the Defendant guilty beyond a reasonable doubt of Count Two of the Indictment. In that Count, the Defendant, MARCELLUS ESTEVES III, is charged with knowingly and intentionally possessing in and affecting commerce a firearm, after having been convicted of a crime punishable by imprisonment for a term exceeding one year; in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The Government would establish the following through reliable and competent evidence:

1. On April 9, 2009, Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Task Force Officer ("TFO") Bobby Stoltz was notified by a New Orleans Police Department ("NOPD") Pawnshop Detective about an individual named Marcellus ESTEVES, who attempted to register a newly-purchased Glock Model 27, .40 caliber pistol bearing serial number MGD218 with the NOPD. Due to ESTEVES's criminal history he was not allowed to register the firearm at the time he

attempted to do so. The NOPD detective contacted TFO Stoltz about ESTEVES's attempt, and Stoltz looked into his criminal history and found that he was convicted on November 23, 2004, in Orleans Parish Criminal District Court, under docket number 444-832 "A," for possession of crack cocaine, battery on a police officer, and aggravated assault on a police officer with a firearm. ESTEVES had been sentenced to three years at hard labor in the custody of the Louisiana Department of Corrections, but that sentence was suspended, and ESTEVES was placed on inactive probation for a period of three years for all three counts.

2. After learning the above information, TFO Stoltz proceeded to Academy Sports & Outdoors located at 800 South Clearview Parkway in Harahan, Louisiana – a federal licensed firearms dealer within the meaning of Chapter 44 of Title 18 of the United States Code and located within the Eastern District of Louisiana – where he obtained a copy of the ATF Form 4473 documenting the sale of the above listed Glock pistol to ESTEVES on April 5, 2009. Stoltz observed that on March 30, 2009, ESTEVES answered "no" to question 11c, stating that he was not a convicted felon. ESTEVES re-certified that statement on April 5, 2009, when he actually took possession of the gun. TFO Stoltz then obtained copies of the two surveillance videos – one from each of the above-mentioned dates – showing ESTEVES completing the ATF Form 4473, paying for the firearm, and then leaving the store with the firearm in hand.

3. The above-mentioned Glock .40 caliber pistol is a firearm as defined 18 U.S.C § 921(a)(3) by nature of the fact that it will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive. Furthermore, it was not manufactured within the State of Louisiana, therefore, it affected interstate commerce at some point in time.

4. On April 14, 2009, in anticipation of a “sting” ATF operation, United States Magistrate Judge Moore issued a warrant for ESTEVES’s arrest based upon a criminal complaint alleging that ESTEVES violated 18 U.S.C. §§ 922(a)(6) and 922(g)(1) “in connection with the acquisition of a firearm from a licensed dealer, [by] knowingly making a false or fictitious written statement, intended and likely to deceive such dealer with respect to a fact material to the lawfulness of the sale of such firearm; and further, [by] knowingly possessing in and affecting commerce a firearm after having been convicted in a court of a crime punishable by imprisonment for a term exceeding one year.”

5. Undercover ATF Special Agents contacted ESTEVES the day the federal warrant for his arrest was issued and told him that he could register the weapon at NOPD Headquarters as long as he brought the gun with him. The following morning, on Wednesday, April 15, 2009, ESTEVES arrived at NOPD Headquarters for that purpose, but he left the gun in his car. However, he did bring into NOPD Headquarters the box in which the Glock firearm was sold, and inside of the box was located the weapon’s magazine containing eight (8) rounds of Speer hollow-point, .40 caliber ammunition. In addition, one (1) round of that same ammunition was found in ESTEVES’s left front pants pocket.

MARCELLUS ESTEVES III admits that he was in possession of the above-mentioned Glock Model 27, .40 caliber pistol bearing serial number MGD218 on April 5, 2009, and he acknowledges that said conduct constitutes a knowing violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

**APPROVED AND ACCEPTED:**

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**MARCELLUS ESTEVES III** (date)  
Defendant

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**ROBERT P. BLACKBURN** (date)  
Attorney for Defendant

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**R. CHRISTOPHER COX III** (date)  
Assistant United States Attorney